

IN THE
**SUPREME COURT OF THE
UNITED STATES**

OCTOBER TERM, 1941

No. 1065

91

CHARLES R. FISCHER, Commissioner of Insurance
of the State of Iowa, as Receiver for the Ameri-
can Life Insurance Company,
Petitioner,

vs.

AMERICAN UNITED LIFE INSURANCE COMPANY, JOHN
G. EMERY, Commissioner of Insurance of the
State of Michigan, as Permanent Liquidating
Receiver of the American Life Insurance Com-
pany of Detroit, Michigan, and DAN E. LYDICK,
Receiver of the American Life Insurance Com-
pany of Detroit, Michigan,
Respondents.

**BRIEF OF RESPONDENTS IN OPPOSITION TO PETI-
TION FOR WRIT OF CERTIORARI TO THE
CIRCUIT COURT OF APPEALS FOR THE
EIGHTH CIRCUIT**

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The questions now sought to be reviewed are purely
questions of law which were decided adversely to the pe-
titioner by the United States Circuit Court of Appeals
for the Eighth Circuit.

It is the position of the respondents that the reasons relied upon by the petitioner do not apply to the present situation, and that the application should be denied. In order properly to point out the inapplicability of the reasons to the case at bar, we deem it necessary to supplement somewhat petitioner's statement of facts as follows:

ADDITIONAL FACTS

The statutes of Iowa (Sections 8654 and 8655, Iowa, 1931, Insurance Laws 218-220) require the deposit by *domestic life corporations of securities*, the pertinent portions of which read as follows:

"8654. Valuation of policies. * * * the Commissioner of Insurance shall ascertain the net cash value of every policy in force * * * in all companies organized under the laws of this state * * *."

"8655. Deposit to cover valuation — policy loan agreements. The net cash value of all policies in force in any such company being ascertained, the Commissioner shall notify it of the amount, and within thirty days thereafter the officers thereof shall deposit with the Commissioner of Insurance the amount of the ascertained valuation in the securities specified in Section 8737 * * *."

The Iowa Company had fully complied with the Iowa statute at the time it reinsured its insurance business with the Michigan Company in 1921. There was, however, no Iowa statute then or now requiring a similar deposit by foreign corporations. Section 8652 reads (225):

"8652 — *Foreign companies — capital or surplus — investments.* No company incorporated by or organized under the laws of any other state or government shall transact business in this state unless it is possessed of the actual amount of capital required of any company organized by the laws of this state, * * * and the same is invested in bonds of the United States or of this state, or in interest-paying bonds, when they are at or above par, of the state in which the

company is located, or of some other state, or in notes or bonds secured by mortgages on unincumbered real estate within this or the state where such company is located, * * * which securities shall at the time, be on deposit with the superintendent of insurance, auditor, comptroller, or chief financial officer of the state by whose laws the company is incorporated, or of some other state, and the commissioner of insurance is furnished with a certificate of such officer, under his official seal, *that he as such officer holds in trust and on deposit for the benefit of all the policyholders of such company*, the securities above mentioned. This certificate shall embrace the items c. security so held, *and show that such officer is satisfied that such securities are worth one hundred thousand dollars * * *.*" (Italics supplied).

By this section such foreign corporations are required to possess an actual amount of capital equal to that required of any domestic company, which capital must be invested as required by the section and at the time be on deposit with the proper official of the state by whose law the company is incorporated, and the Iowa commissioner must be furnished with a certificate that such deposit is for the benefit of *all policyholders of the company* (225-226). No other Iowa statute applies to the deposits of foreign life insurance companies.

Under Sections 12390-12391, of the Compiled Laws of Michigan, 1929, which appear as Sections 9326 and 9331 of the Compiled Laws of Michigan, 1915, (Ex. H), the pertinent portions read as follows (279-282):

"Sec. 4. The capital of any stock company organized under this act shall not be less than one hundred thousand dollars * * *; and no such stock company * * * shall be authorized to issue policies or assume any risk whatever until they have deposited with the state treasurer, as security for any liability to insured parties, stocks or bonds of the United States or of any state or territory of the United States,

or of any city, county, village, township or school district of this state authorized by act of legislature to issue the same, or first mortgage bonds of corporations organized under the laws of the state of Michigan, to the amount in par value, exclusive of interest, of not less than one hundred thousand dollars, which stocks or bonds shall be retained by the state treasurer, and disposed of as hereinafter directed: * * * Provided further, That personal obligations secured by first mortgage on improved and productive real estate within this state, worth at least double the amount of the lien and bearing interest of not less than five per cent per annum, may be received by the state treasurer instead of the bonds or stock hereinbefore provided for in this section. * * *

“Sec. 9. The bonds, or stocks and mortgage securities deposited by any such company with the state treasurer, shall be held by him as security for policyholders in such company; * * *

and Section 12,377, of the Compiled Laws of Michigan, 1929, reads as follows:

“Sec. 18. Whenever any fire or life insurance company, organized under the laws of this state and desiring to be admitted to do business in any state of the United States or in any foreign country, shall be required to make or maintain a deposit of cash or securities or both in some state for the benefit of its policyholders other than or in addition to the deposit required to be made with the state treasurer under the law of its incorporation, such other or additional deposit may be made and maintained with the state treasurer of this state. *Such deposits so made shall be held by the state treasurer as security for the policy-holders of the company making the deposit* and shall be subject so far as applicable to all the provisions of law governing deposits with the state treasurer by legal re-

serve life insurance companies organized under the laws of this state."

In 1921 the Michigan Company was required to have on deposit with the Treasurer of the State of Michigan securities of the face value of \$100,000.00. At a later date this statute by amendment required a \$200,000.00 deposit. The Michigan Company at all times complied with these requirements.

As provided in the contracts, Ex. A, B and C, securities were withdrawn from the deposit with the Iowa Insurance Company by the Michigan Company and securities of the same kind and character deposited in lieu thereof, but at all times the face amount of the deposit was in an amount equal to the legal reserves upon the policies of insurance which originated in the Iowa Company as required by the contracts (193-194). The withdrawal and substitution of securities by the Michigan Company was continued to April 12, 1938, and on that date all securities, except five items of the face value of approximately \$30,000.00, were substituted securities and were not a part of the deposit at the time of the execution of the contracts (194). The Michigan Company collected all income from the securities and handled all administrative matters connected with the securities. There were no written assignments of the securities, so only the bare physical possession was in the Iowa Insurance Commissioner (194).

From 1921 to 1938 the Michigan Company operated in various states of the Union, including Iowa and Michigan. Pursuant to the statutes of the several states, annual reports showing the financial condition of the company were filed with the insurance commissioners (195). The Michigan Company filed such reports with the Iowa Insurance Commissioner as well as the Michigan Insurance Commissioner as of December 31, 1921 to as of December 31, 1937. Except for the report of December 31, 1937, at no time did the report disclose that a part of its assets were deposited in the State of Iowa for the exclusive protection of policies originating in the Iowa Company, but

rather the reports stated just the contrary. As to the statement of December 31, 1937 at the examination of the company which found it insolvent, upon the insistence of the Iowa examiner, such a statement appeared in the report. No license to do business was issued upon this report in any state (195) (245-277).

The Michigan statute governing the liquidation of domestic insurance companies reads as follows:

"12266. *Liquidation; order, filing, contents; powers of commissioner.* Sec. 4. If, on like application and order to show cause, and after a full hearing, the court shall order a liquidation of the business of such corporation, such liquidation shall be made by and under the direction of the commissioner of insurance who may deal with the property and business of such corporation in his own name as commissioner or in the name of the corporation, as the court may direct, and shall be vested by operation of law with title to all the property, contracts and rights of action of such corporation as of the date of the order so directing him to liquidate. The filing or recording of such order in any record office of the state, shall impart the same notice that a deed, bill of sale or other evidence of title duly filed or recorded by such corporation would have imparted.
 . . ."

By virtue of this statute and the order appointing him receiver, John G. Emery, Commissioner of Insurance of the State of Michigan and domiciliary receiver of the Michigan Company, became vested with title to all assets wherever located of the Michigan Company as of April 12, 1938 (286). He retained possession of the cards, books and records relating to the policies originating in the Iowa Company and collected the premiums thereon until November 17, 1939 (201). On November 17, 1938 in appropriate proceedings the Michigan receiver entered into a written agreement with the American United Life Insurance Company for the reinsurance of all the business of the Michigan Company. The American United Life Insurance Company issued a

certificate of assumption to all outstanding policyholders of the Michigan Company. It took possession of all books, records, and files of the Michigan Company, including those pertaining to the policyholders originating in the Iowa Company, and has since November 17, 1939 been collecting premiums on all outstanding policies (198-199).

On November 17, 1939 there were 4,313 policyholders in the Michigan Company who originated in the Iowa Company, representing insurance in force in the amount of \$6,657,364.82. These policyholders were distributed among 41 different states of the Union, as well as Canada, Philippine Islands, Hawaii, Porto Rico, and South America. Of these policyholders 1,535 were residents of the State of Iowa, representing insurance in force in the amount of \$2,456,039.00 or 36.89% of the group. Also resident in Iowa were 1,707 policyholders who originated in the Michigan Company, representing \$2,315,543.70 insurance in force, which, under the theory of the petitioner, are not protected by the Iowa deposit.

Upon notice of the reinsurance agreement given them by the Michigan receiver, and receipt of the assumption certificate from the American United Life Insurance Company, only 81 policyholders originating in the Iowa Company dissented (199). All the rest have accepted the reinsurance agreement, and look now to the American United Life Insurance Company for the fulfillment of their policy contracts. The 81 policyholders who dissented filed claims for the value of their policies with the Michigan receiver for submission to the Circuit Court for the County of Ingham, in Chancery, Michigan (199).

It is the claim of the petitioner that notwithstanding the provisions of Michigan law he has the sole and exclusive right to administer the assets in the Iowa deposit; that on April 12, 1938 title to them vested in him as Insurance Commissioner of the State of Iowa; that he holds them for the sole and exclusive benefit of only those policyholders who originated in the Iowa Company and whose policies were in force on April 12, 1938; that the assets in the Iowa deposit and the policyholders originating in the Iowa Company, regardless of the election they

have made, should be separated from all others and from the domiciliary receivership; that those assets should be liquidated and the policyholders originating in the Iowa Company treated by a separate and distinct receivership in the Iowa State Courts.

It was upon this claim that issue was framed. Pleas to the jurisdiction (12, 16, 24) were overruled and exceptions properly preserved (28). Pursuant to Rule 12 the respondents answered (143-148-163). The cause was heard upon its merits commencing June 3, 1940. The District Court granted the relief petitioner prayed for, but this decision was reversed by the Circuit Court of Appeals, which held that the Federal Court had no jurisdiction over the subject matter.

The validity of petitioner's contention must depend upon whether this principle as enunciated by the Circuit Court of Appeals is in conflict with the decisions of this Court, or if it is contrary to applicable local law of the State of Iowa.

ARGUMENT

We do not believe that this is a cause under the rules of this Court and Section 240 (a) of the Judicial Code as amended (28 U.S.C.A. Sec. 347) in which a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit should issue. We realize that whether or not a writ of certiorari to the Circuit Court of Appeals should issue rests in the sound discretion of this Court, but, on the other hand, while the power is co-extensive with all possible necessities, it is a power which will be sparingly exercised and only when the circumstances of the case as applied to the situation at bar make it clear that the Federal Court had jurisdiction over the subject matter of the cause and the decision of the United States Circuit Court of Appeals that the Federal Court did not have jurisdiction is in conflict with the Iowa law and the decisions of the Supreme Court of the State of Iowa upon that same question.

Forsyth v. Hammond, 166 U. S. 506, 17 Sup. Ct. 665, 41 L. Ed. 195.

We contend that the Federal Court was without jurisdiction because the jurisdiction of the subject matter was exclusively in the Michigan Court in charge of the receivership, and that the decision of the Circuit Court of Appeals for the Eighth Circuit was entirely in harmony with the decisions of the Supreme Court of the State of Iowa insofar as they have passed upon the questions that may be considered to be involved in this case.

The opinion of the Circuit Court of Appeals, in determining that there was no jurisdiction, proceeded upon the reasoning that the Michigan court had first acquired jurisdiction of the securities on deposit in Iowa and, secondly, that the Federal Court could not be called upon to decide which of two state courts had the right to administer assets and determine controversies, a proceeding which would amount to a collateral attack upon which it is submitted that there is no conflict of authority either in the majority opinion or dissenting opinion, or in the law generally. It is the contention of the Respondents that the opinion of the Circuit Court of Appeals is correct in holding that there was no jurisdiction, and in answer to the contention of petitioner set forth in his petition for certiorari the respondents contend that the conclusion of the Circuit Court of Appeals is correct, is supported by adequate authority, is not in conflict with the decisions of the United States Supreme Court, and has not decided a question of local law contrary to applicable statutes and decisions of the State of Iowa. It must be further noted that the action originally brought by petitioner was not limited to the foreclosure of liens, but was broad in its character and sought general relief including control of assets, the situs of which was in several other states, and injunctive relief.

Federal Court Did Not Have Jurisdiction Over the Subject Matter.

Under the life insurance liquidation statutes of Michigan, as has been pointed out in the statement of facts, the respondent John G. Emery, as domiciliary receiver of the American Life Insurance Company, is the holder

of absolute title to all assets of the American Life Insurance Company wherever situated, regardless of state lines, including the deposit in the State of Iowa which is the subject matter in this cause. The respondent American United Life Insurance Company has an interest in the deposit by virtue of its contract of reinsurance entered into with the respondent John G. Emery, domiciliary receiver. The Michigan statute vesting title in all assets in an insolvent insurance company in the Insurance Commissioner of the State of Michigan, who becomes the statutory receiver of such insolvent companies, is not unusual and is to be found in insurance laws of many of the states. Similar statutes of other states have been construed many times by this Court and by various Federal and State courts.

The questions involved herein were particularly raised in litigation concerning the receivership of the Life Association of America, an insolvent Missouri corporation placed in the hands of the Superintendent of Insurance of Missouri as Statutory Receiver, of which assets were deposited in various states. In many of the cases it was claimed that the assets deposited in particular states were so placed as a special and continuing security for the benefit of the policyholders of that particular state, and that such assets constituted a trust fund charged with the payment of the policyholders of the state in question to the exclusion of other creditors and policyholders.

One of the earliest cases, and perhaps the leading case by virtue of the many times it has been cited and quoted and followed in later cases arising out of the situation set forth is *Relf v. Rundle*, 103 U. S. 222, 26 L. Ed. 337. Relf was the Superintendent of Insurance of the State of Missouri, and as such became the statutory receiver of the Life Association of America pursuant to liquidation proceedings in the State Court in Missouri. As in Michigan, under the statutes of the State of Missouri upon the appointment of a receiver for a domestic insurance company, title to all the assets of the insolvent corporation vested in the receiver for the use and benefit of the creditors and policyholders of such corporation and

such other persons as might be interested in such assets. Rundle, a policyholder of the company in the State of Louisiana, which was the Department of Louisiana, commenced a suit against the Life Association to have the assets of the company in Louisiana declared a trust fund and applied to the payment of the claims of Louisiana creditors and policyholders in preference to others. John R. Fell of New Orleans was appointed the Louisiana receiver. This Court in its opinion pointed out that the entire controversy was between Rundle, representing the Louisiana creditors and policyholders on one side, and Relf, the domiciliary receiver, as representative of the corporation and its property on the other side, as to the respective rights of the parties in the Louisiana assets. Mr. Chief Justice Waite, speaking for the Supreme Court, said:

“Fell has in his possession, as a naked trustee, some of the Louisiana assets, * * *. After the decree of dissolution the Life Association Company had no longer any corporate existence, and the temporary agency and receivership of Frost (temporary receiver) was ended when the property of the Corporation was transferred to Relf and he became under the law entitled to the possession. * * * He was the statutory successor of the Corporation for the purpose of winding up its affairs. As such he represents the corporation at all times and places in all matters connected with his trust. He is the trustee of an express trust, with all the rights which properly belong to such a position. He is an officer of the State, and as such represents the State in its sovereignty while performing its public duties connected with the winding up of the affairs of one of its insolvent and dissolved corporations. His authority does not come from the decree of the court, but from the statute. He appeared in Louisiana not by virtue of any appointment from the court, but as the statutory successor of a corporation which the court had in a legitimate way dissolved and put out of existence. He was in fact, the Corporation itself for all the purposes of winding up its affairs.”

This case is a complete answer to the contention of the applicant that the jurisdiction of the respondent Emery is limited by the territorial boundaries of the State of Michigan a question not before brought into the case. The cases cited by the applicant to the proposition that the Michigan Court and the authority of its receiver is limited by the territorial boundaries of the State of Michigan are cases in which there is no statute vesting absolute title in a state officer who becomes a statutory receiver. In the situation before us the respondent Emery was an officer of the State of Michigan representative of the insolvent life insurance company and as such the trustee of an express trust with all rights which properly belong to such a position. His right to the property in the Iowa deposit was not solely by virtue of his appointment by the State Court in Michigan, but because of the Michigan statute which vested title in him upon the insolvency of the American Life Insurance Company. This principle of law has been repeatedly set forth in the decisions of this Court based upon the authority of *Relf v. Rundle*, *supra*. A few of those cases are the following:

Chesapeake etc. Ry. Co. v. McCabe, 213 U. S. 218, 53 L. Ed. 770;

Baltimore etc. R. R. Co. v. Koontz, 104 U. S. 16, 26 L. Ed. 646;

Bernheimer v. Converse, 206 U. S. 534, 51 L. Ed. 1176;

Nashua Savings Bank v. Anglo-American Land etc. Co., 189 U. S. 230, 47 L. Ed. 786.

The case of *Relf v. Rundle* also set forth the well-established and fundamental principle, important in the situation before us, that the laws of a domiciliary state of a life insurance company are a part of its charter:

“Every corporation necessarily carries its charter wherever it goes, for that is the law of its existence. It may be restricted in the use of some of its powers while doing business away from its corporate home, but every person who deals with it everywhere is bound to take notice of the provisions which

have been made in its charter for the management and control of its affairs both in life and after dissolution."

Relf v. Rundle, supra.

Under the contracts between the Iowa Company and the Michigan Company all of the insurance business and liabilities of the Iowa Company were conveyed to and assumed by the Michigan Company (Ex. A, B & C) (203-218). Among the assets of the Iowa Company specifically conveyed to the Michigan Company was the deposit with the Insurance Commissioner of the State of Iowa. Pursuant to the terms of the contracts of reinsurance, the Michigan Company issued to all the policyholders of the Iowa Company a certificate of assumption of policy liability (Ex. 2) (227). Under the terms of that certificate all policy rights, privileges and benefits theretofore contracted to be made by the Iowa Company were assumed by the Michigan Company. The certificates of assumption were furnished to each policyholder of the Iowa Company who accepted them and retained them, and by virtue of the issuance and acceptance of such certificates of assumption, the policyholders of the Iowa Company became and thereafter were policyholders of the Michigan Company. The effect of the reinsurance agreement and the acceptance of the assumption certificate by the policyholders of the Iowa Company was that they acquired new insurance protection. The new protection came from the Michigan Company. The liability of the Iowa Company for the respective sums specified in its policies was ended and was replaced by the liability of the Michigan Company backed up by all of the assets conveyed to the Michigan Company plus all assets that the Michigan Company owned. Those policyholders were not bound to accept the Michigan Company in lieu of the Iowa Company, but could have elected to demand the value of their policies out of the Iowa Deposit at that time.

Lovell v. St. Louis Mut. Life Ins. Co. 111 U. S. 264, 28 L. Ed. 423.

But since they did elect to accept the Michigan Company in lieu of the Iowa Company, rather than to demand the value of their policies out of the Iowa deposit, a novation was created in which the Michigan Company was substituted for the Iowa Company in regard to all liability. *Hobbs v. Occidental Life Insurance Co.*, 87 Fed. (2d) 380. Thereafter the deposit was continued with the Insurance Commissioner of the State of Iowa by the Michigan Company, not by virtue of any statutory obligation, but solely by virtue of a contractual obligation. There was nothing in that contract that established that deposit as a trust fund for the benefit of those policyholders who originated in the Iowa Company. The action of the parties in carrying out the contract does not disclose any such intent. The Michigan Company continued to write insurance in the several states in the Union without notice to any of the new policyholders or any of the old policyholders originating in the Michigan Company that the group of policyholders taken over in the Iowa Company were especially protected. The annual reports made by the Michigan Company to the various Insurance Departments subsequent to 1921 and upon which certificates to do business were issued (245-278) did not disclose this fact. The Michigan law was a part of the charter of the Michigan Company which the policyholders originating in the Iowa Company had accepted in lieu of the Iowa Company, and it is to the Michigan receiver and assets that they must look now that insolvency has intervened. This principle is very well stated in the case of *Rundle v. Life Assn. of America*, 10 Fed. 720, which is a companion case to *Relf v. Rundle*, *supra*. The Court also said:

“There must be a common method by which the amount due by or to each policyholder shall be ascertained, and this must be done by a common representative. This is the contract to which the plaintiffs bound themselves when they subjected themselves to the operation of the organic law of the corporation by becoming members of it. They cannot, therefore, now ask the court to protect them in the exercise of a right which they expressly relinquished. The effect which is wrought by this con-

tract and assent to the laws of the State of Missouri makes the territorial extent of the authority of the superintendent to administer co-extensive with the authority of an assignee in bankruptcy, or a receiver of a national bank, springing from the territorial effect of a national law."

Such is the position of the policyholders originating with the Iowa Company. By retaining the assumption certificate, each became a member of the Michigan Company and a creditor of it. Each assented to the law of the State of Michigan, to the principle that in case of insolvency distribution would be made by the Commissioner of Insurance of the State of Michigan as statutory receiver, and that distribution would be in accordance with the laws of the State of Michigan.

The same argument that is being set forth by petitioner was found in the case of *Davis v. Life Association of America*, 11 Fed. 781.

In deciding against this contention, the Court referred to the case of *Relf v. Rundle*, *supra*, and held that the policyholders must be governed by the operation of the law of the state of the domicile of the company, saying:

"This reasoning of the Supreme Court of the United States is an answer to the argument made on this point, and the complainants here cannot be heard to say that they are not bound by the law of the corporation of which they become and are members."

In the case of *Taylor v. Life Association of America*, 13 Fed. 493, a policyholder in Tennessee claimed a return of premiums for policies not matured by death or otherwise, and attempted to attach the deposited assets within the State of Tennessee. Taylor claimed the policyholders in that state had a lien or priority on the assets deposited in that state for the satisfaction of their policies. In deciding against this contention, the Court said:

“They derive all their rights through the laws of Missouri; and their contracts with each other, namely, their policies, are governed by these laws and the contract itself. They cannot, when the storm of insolvency comes, separate themselves from this peculiar relation, and claim as *creditors* in the ordinary acceptance of the term; treat their co-members as other creditors, and the corporation as an independent entity, and run a race for an inequitable preference in the assets on any notion that, as citizens of this state and creditors, they may have all the assets here.”

And later on in the opinion, as in the case at bar, the Court said:

“This disposition of the case likewise finds support in the adjudications made in other circuits; and, having no toleration for the disastrous determination of creditors to seek administration of these assets in many states, instead of in the one under whose laws they have all been acting, and by which they are bound in their enterprise, unless for more substantial reasons arising out of unjust discriminations in that state that any appearing in this case, I more readily yield to their authority.” (Citing cases referred to above).

Likewise, in the case at bar, the Iowa policyholders have no right “in the storm of insolvency” to consider themselves in a class by themselves and not bound by the laws of the State of Michigan, which are a part of the charter of the company they became members of by retaining the assumption certificates and paying the premiums upon their policies through the years.

Other cases setting forth these principles are *Fry v. Charter Oak Life Ins. Co.*, 31 Fed. 197, and *Parsons v. Charter Oak Life Ins. Co.*, 31 Fed. 205.

As pointed out in the opinion of the Circuit Court of Appeals, the insolvency proceedings under the Michigan statute were initiated in Michigan in the Circuit Court

for the County of Ingham in Chancery on April 12, 1938, some sixty days prior to the institution of any proceedings in the Iowa Court. The Michigan proceedings have been pressed with all orderly expedition. In due time the respondent Emery was appointed statutory receiver, and by operation of the Michigan statute all assets of the American Life Insurance Company, including the Iowa deposit, vested in him. The Ingham County Circuit Court of Michigan had jurisdiction over all the assets of the American Life Insurance Company. Some of the assets might be in the possession of others under titles subordinate to the Michigan Receiver. Under these circumstances the Michigan Court has exclusive jurisdiction of the involved assets and of all litigation with respect thereto, including conflicting claims, liens, and other rights. The right to administer those assets is in the domiciliary receiver. The treatment accorded the policyholders originating in the Iowa Company must be determined by the domiciliary receiver under the direction of the Michigan Court. *Relf v. Rundle, supra*.

The position of the petitioner and his arguments based upon general receivers is very well distinguished in the language of the Court in the case of *Fry v. Charter Oak Life Ins. Co., supra*, when the Court said in the course of his opinion:

"The proceeding now pending in the state of Connecticut, as before explained, is essentially a suit by the state to annul the defendant's franchise, and liquidate its affairs. It is a special statutory proceeding, applicable to insurance companies whose capital has become impaired. In that class of cases it is the rule that the filing of the complaint by the state operates as a sequestration of the corporate property, for the purposes contemplated by the statute under which the proceeding is brought, from the filing of the complaint, and not merely from the entry of a final decree."

And in the course of the opinion, holding the policyholder to be subject to treatment by the domiciliary receiver, the Court said:

“Plaintiff is a member of the defendant company, and as such is entitled to participate with other policyholders in a *pro rata* distribution of its assets. A suit was pending in the home state to accomplish that result when this action was filed. The plaintiff in that case represents all the policyholders, as well as other creditors of the company; the proceeding is for their benefit; and it is only by means of a suit of that character that the rights of all the policyholders of the company can be secured. Nothing but confusion and inequality can result from entertaining a suit of this nature in this jurisdiction.”

These same principles are set forth in the cases of *Smith v. Taggart*, 87 Fed. 97; *International Co. v. Occidental Life Ins. Co.*, 98 Fed. (2d) 138; and *Holloway v. Federal Reserve Life Ins. Co.*, 21 Fed. Sup. 516, and in the cases relied upon in the opinion of the Circuit Court of Appeals, *Motlow v. Southern Holding & Securities Corporation*, 95 Fed. (2d) 721, and *Holley v. General American Life Ins. Co.*, 101 Fed. (2d) 172.

It is the position of the respondents, and so found by the Circuit Court of Appeals, since Michigan has a comprehensive method for the winding up of affairs of a Michigan insurance company, that no court, state or federal, in any other jurisdiction can interfere with the liquidation of the assets of the insolvent company, no matter where they may be located. In addition to the cases cited or referred to above, the following cases support this proposition:

Hutchins v. Pacific Mut. Life Ins. Co., 97 Fed. (2d) 59;

Kansas v. Occidental Life Ins. Co., 95 Fed. (2d) 935;

Hobbs v. Occidental Life Ins. Co., 87 Fed. (2d) 380;

Hartford Life Ins. Co. vs. Ibs, 237 U. S. 662, 59 L. Ed. 1165;
Hartford life Ins. Co. v. Barber, 245 U. S. 146; 62 L. Ed. 208.

If the holding of the Circuit Court of Appeals is incorrect, the result would be to permit the petitioner to administer the assets in the deposit in suit and to accord treatment to the policyholders originating in the Iowa Company, which would lead to endless confusion and inequitable treatment, not only to the policyholders originating in the Michigan Company, but to those in the Iowa Company. The record shows that the average age of the policyholders originating in the Iowa Company is in excess of sixty years. It would be difficult, if not impossible, for those policyholders to secure other insurance. All but 81 of them have accepted the assumption agreement of the respondent American United Life Insurance Company and are depending upon that company to fulfill the contract which they hold. For a period of ten years, in the case of maturity of the policy by death, the face amount of the policy will be paid. Under the reinsurance agreement, if they are entitled to preferential treatment, provision is made for such treatment, but only the Michigan Court can decide such question. The 81 policyholders who dissented have submitted themselves to the Michigan court by filing their claims with it. They cannot now look to an Iowa court for treatment. This point was clearly established in the case of *Phipps, et al. v. Chicago, R. I. & P. Ry. Co.*, 284 Fed. 945. That case held that a cestui que trust is bound by the decree of the court when he has filed and proved his claim under such decree. See also *MacDonald vs. Pacific States Life Insurance Co.*, (Missouri) 124 S. W. (2d) 1157.

It is clear that the opinion of the Circuit Court of Appeals is in no way in conflict with the applicable decisions of this Court; that it has not in any manner departed from the accepted and usual course of judicial proceedings and therefore, that there is no call for this Court to exercise its power of supervision.

There remains only the question as to whether the decision decides an important question of local law in a way in conflict with the applicable statutes and decisions of the State of Iowa.

Decision of Circuit Court of Appeals Not in Conflict with Iowa Law.

The Iowa statute upon which the petitioner relies in contending the decision of the Circuit Court of Appeals is erroneous applies only to domestic insurance companies. It does not apply to an insolvent foreign life insurance company, doing business in the State of Iowa. This distinction was very clearly pointed out in the case of *Blake v. Old Colony Life Ins. Co.*, 209 Fed. (8th Circuit) 309, which involved a life insurance company receivership under similar laws of the State of Missouri, where the Court said:

“Manifestly the provision in 6985 has reference to domestic companies, and to the only securities required to be deposited by foreign companies, and they are the ones referred to in section 6985 as to be returned. The Legislature could have required foreign companies to make a deposit in trust, and could have defined who its beneficiaries should be, and of what the trust should consist, but it did not do so. It follows that the securities were deposited without authority of law.”

Likewise, the statute of Iowa did not require such a deposit as we are now dealing with, but because of a contractual obligation that deposit was maintained by the presently insolvent life insurance company. The whole tenor of the Iowa statute is contrary to the contention of the applicant. It is the intent of the Iowa statute that deposits are for the benefit of all policyholders. In that portion of the statute wherein it is provided that if a foreign insurance company has a deposit in its home state or in any other state in the amount of \$100,000.00 or more for the benefit of all policyholders, it is stated that a foreign life insurance company need not make a deposit in the State of Iowa. This expresses the policy of the

State of Iowa that deposits of life insurance companies for the benefit of policyholders must be for the benefit of all policyholders.

In the Iowa liquidation statutes, Sections 8660-8663, of the Insurance Laws, there is no attempt to vest in the Commissioner of Insurance of Iowa the title of securities belonging to foreign corporations. The securities to which title is vested in the Iowa Commissioner of Insurance are the securities deposited by domestic companies in compliance with statutes, Sections 8654-8655. Hence there has been no statutory devolution upon the Iowa Commissioner of the securities belonging to the Michigan Company and deposited by it in fulfillment of its contractual obligation. The only purpose of reference to that statute in the contract is to provide a yardstick by which the deposit was to be maintained in Iowa for whatever reasons the parties may have had in mind for continuing the deposit in the State of Iowa.

The petitioner in this litigation is not attempting to protect the rights of citizens of the State of Iowa. Instead he claims to represent policyholders who originated in the Iowa Company, all but 81 of whom have accepted the reinsurance agreement with the respondent American United Life Insurance Company, and those 81 have submitted to the jurisdiction of the Michigan court. He is in the position of the Treasurer of the State of Kansas, as described in the case of *Illinois Life Insurance Co. v. Tully*, 174 Fed. 355, wherein the Court said:

"We have assumed, as was apparently done below, that the treasurer was the trustee for or stood in such privity with the policy holders as to be entitled to make any defense to this action which they might have made had they been parties to it. But in view of the conclusions already reached that he is a mere volunteer, a bailee assuming to act without authority of law or contract, it is questionable if he can invoke for his justification in this case any of the rights of the policy holders."

The local law or policy of the State of Iowa is well expressed in the case of *Pars v. Charter Oak Life Ins.*

Co., 31 Fed. 305. In that case a policyholder in the State of Iowa attempted to seize for the benefit of the policyholders of Iowa assets of the value of \$100,000.00 belonging to an insolvent life insurance company domiciled in the State of Connecticut. The Court pointed out that the Connecticut receiver of the insolvent life insurance company took title to all of its assets wherever located, and then went on to say:

"The laws of Iowa, as well as those of Connecticut, recognize the fact that 'equality is equity,' when the assets of the insolvent corporation are to be distributed. As there is not to be found in the statutes of Iowa any provision attempting to secure superior rights to Iowa creditors in the assets of the company situated in Iowa, and as the charter of the company does not confer such, it follows that, if the Iowa creditors have such superior right, it must be based upon the idea that the state recognizes the claims of Iowa citizens to property found in the state to be always superior to those of non-residents; * * *"

"The provisions of the charter estop the complainants, who, as policyholders, are bound by its terms from denying the right of other policyholders to an equitable participation in the assets of the company; and they cannot object to the enforcement of the method provided by the charter and laws of Connecticut, forming part thereof, for securing such equitable distribution in case of the dissolution of the corporation."

In support of petitioner's claim that he is acting in conformity with the local policy of the State of Iowa, he relies upon the cases of *Clark v. Willard*, 292 U. S. 112, 78 L. Ed. 1160, *Clark v. Willard*, 294 U. S. 211, 79 L. Ed. 865, and a few decisions from the Supreme Court of the State of Iowa. None of these decisions establishes a local policy in the State of Iowa that even remotely touches upon the situation at bar.

The *Willard* cases are in fact in support of the respondent's position. Under the Iowa statute vesting title

to all property of an insolvent domestic insurance company in the Insurance Commissioner as statutory receiver, Clark, as statutory receiver, endeavored to assert his rights to property in Montana through the Montana courts. He was resisted by Williard, a citizen of the State of Montana, who was an attachment creditor prior to adjudication of insolvency. The question before this Court was whether there was in Montana a local policy expressed in statute or decision whereby judgments and attachments had a preference over the title of a statutory liquidator. In the first *Willard* case there was nothing before the Court to indicate what the local policy was in the State of Montana, so the case was remanded to the Supreme Court of the State of Montana for it to determine local policy of the State of Montana, but in the course of his opinion Mr. Justice Cardozo said:

"In our judgment the statutes of Iowa have made the official liquidator the successor to the corporation, and not a mere receiver. *State ex rel. Atty. Gen v. Fidelity Loan & T. Co.*, 113 Iowa, 439, 85 N. W. 638. His title is not the consequence of a decree of a court whereby a corporation still in being has made a compulsory assignment of its assets with a view to liquidation. (citing many cases) His title is the consequence of a succession established for the corporation by the law of its creation. (citing cases, including *Relfe v. Rundle*) So the law-makers have plainly said. So the Iowa court adjudged in decreeing dissolution."

This is, of course, exactly the theory of the respondents, and it is an expression of this Court that the local policy of the State of Iowa in regard to the statutory succession of the respondent Emery is entirely consistent with the opinion of the Circuit Court of Appeals.

In the second *Williard* case, which came before this Court after the Supreme Court of the State of Montana had established the local policy of that State, Montana did not challenge the standing of the foreign liquidator as successor to the dissolved corporation or as owner of all of its assets, but Montana did impose upon such

ownership the lien of judgments and executions. This Court held that this was no denial to the statutes of Iowa or to its judicial proceedings under the faith and credit owing to them under the Constitution of the United States. Lien judgments and executions are not involved in the present litigation, nor is any citizen of the State of Iowa asserting a claim.

The case of *Watts v. Southern Surety Co.*, 216 Iowa 150, 248 N. W. 347, undoubtedly best expresses the local policy of the State of Iowa. There the Iowa Supreme Court said:

“This is to the effect that domestic assets will not as against domestic creditors be transmitted to a foreign receiver or liquidator, *if there is any danger that the latter's distribution thereof will be made in a manner unfair to the domestic creditors * * **” (Italics supplied).

It is to be noted that in the *Williard* cases and in the *Southern Surety Company* case surety companies were involved and not life insurance companies.

The local policy of the State of Iowa as expressed by the opinions of its court of last resort is that a citizen of the State of Iowa, who is a creditor of a foreign corporation, has a lien right upon its assets if the court in charge of the receivership should determine that there is any danger that a distribution of the assets will be made to the disadvantage of the citizen creditor of the State of Iowa. But that situation is not involved in this case. The petitioner without authority of statute or court decision seeks to represent policyholders scattered through 41 states of the Union and several foreign countries, merely because of the fact that they originated in a company domiciled in Iowa and attempts to read into the reinsurance treaty a contractual relationship that has the full force and effect of a statutory provision. The contractual provisions of the reinsurance treaty are not based upon any Iowa statute. For purposes not clear to us the petitioner seeks to divide the insolvent life insurance company into segments so that he may liquidate and distribute a large portion of its assets for the pretended

benefit of policyholders who originated long ago in an Iowa domestic life insurance company. If such an administration could be beneficial, it would affect 1,535 resident policyholders of the State of Iowa, representing insurance in force of \$2,456,039.00. It would entirely disregard the rights of 1,707 policyholders of Iowa who originated in the Michigan Company, representing \$2,315,543.70 insurance in force. The absurdity of the petitioner's contention is apparent.

CONCLUSION

The Circuit Court of Appeals for the Eighth Circuit by its decision in the case at bar did not establish a principle of law in conflict with the decisions of this Court or courts in other circuits, nor did it establish a principle of law in conflict with the local policy established by the statutes of the State of Iowa or the opinions of its court of last resort. Rather its decision was entirely in harmony with the decisions of this Court, the statutes of Iowa, and Iowa decisions. It, therefore, follows that the ground upon which petitioner rests his case for the granting of a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is without foundation.

We, therefore, pray that the petition be denied.

Respectfully submitted,

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